

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

SYLVIA BURWELL, *et al.*,

Defendants.

No. 7:16-cv-00108

**PLAINTIFFS' MOTION FOR
EXTENSION OF TIME TO RESPOND
TO MOTION TO INTERVENE**

Pursuant to Local Rule 7.1, Plaintiffs respectfully move this Court for an extension of time to respond to the pending motion to intervene (ECF No. 7) until 14 days after the Defendants have filed their responsive pleading. In support of this motion, Plaintiffs show the following:

1. On August 23, 2016, Plaintiffs filed their Complaint. ECF No. 1. Summons were issued on the same day, ECF No. 3, and they were returned executed on September 2, 2016. ECF Nos. 5-6.

2. On September 16, 2016, Movants ACLU of Texas and River City Gender Alliance moved to intervene. ECF No. 7.

3. The deadline for responding to the motion to intervene is October 7, 2016, at least two weeks before Defendants are required to respond to the Complaint.

4. To intervene in a case in the Fifth Circuit, a party seeking intervention must demonstrate that its interests are "not adequately represented by the existing parties." *Hopwood v. State of Texas*, 21 F.3d 603, 605 (5th Cir. 1994). When one of those parties is a governmental agency, the government "is presumed to represent the interests of all of its citizens[.]" *id.* (citation omitted) and "a much stronger showing of inadequacy is required." *Id.* (citing 7C Charles A. Wright and Arthur R. Miller, *Federal Practice & Procedure* § 1909 (1986)). Thus, a key question on this

motion to intervene is whether or not the United States will adequately represent the interests of the putative intervenors.

5. To date, Defendants have not yet responded to the Complaint. Thus, the putative intervenors and Plaintiffs can only speculate about what arguments and defenses “Defendants are likely to make.” ECF No. 7 at 5.

6. Given that the adequacy of Defendants’ representation is pivotal to deciding the motion to intervene, and Defendants have not yet taken any position in the litigation, Plaintiffs request that the deadline for responding to the motion to intervene be reset until 14 days after Defendants file their responsive pleading.

7. Counsel for Defendants has indicated that Defendants do not anticipate opposing this motion. Counsel for putative intervenors oppose this motion.

Respectfully submitted this 3rd day of October, 2016.

<u>/s/ Luke W. Goodrich</u> Luke W. Goodrich DC Bar No. 977736 (N.D. Tex. Admission pending) The Becket Fund for Religious Liberty 1200 New Hampshire Ave. NW Suite 700 Washington, DC 20036 (202) 955-0095 (202) 955-0090 lgoodrich@becketfund.org <i>Counsel for Plaintiffs Christian Medical & Dental Associations, Franciscan Alliance, Inc., Specialty Physicians of Illinois, LLC</i>	KEN PAXTON Attorney General of Texas JEFFREY C. MATEER First Assistant Attorney General BRANTLEY STARR Deputy First Assistant Attorney General PRERAK SHAH Senior Counsel to the Attorney General ANDREW D. LEONIE Associate Deputy Attorney General for Special Litigation AUSTIN R. NIMOCKS Associate Deputy Attorney General for Special Litigation <u>/s/ Austin R. Nimocks</u> AUSTIN R. NIMOCKS Texas Bar No. 24002695
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CERTIFICATE OF CONFERENCE

On September 23, 2016, counsel for Plaintiffs, Luke Goodrich, informed Adam Grogg, counsel for Defendants, of Plaintiffs' intent to seek this extension. On September 30, 2016, Mr. Grogg indicated that Defendants do not anticipate opposing this motion for extension.

On September 30, 2016, counsel for Plaintiffs, Luke Goodrich, informed James Esseks and Rebecca Robertson, counsel for putative intervenors, of Plaintiffs' intent to seek this extension. On October 3, 2016, Mr. Esseks indicated that putative intervenors oppose this motion for extension.

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2016 the foregoing motion and memorandum was served via ECF on Movants. Counsel for Defendants has not entered an appearance in this case. I hereby certify that I have mailed copies of the filing to Defendants via U.S. Mail at the address of their designated representative: Mikia J. Turner, 200 Independence Avenue, S.W., Washington, DC 20201. In addition, I have emailed copies of the filing to Sheila Lieber and Adam Grogg, who have identified themselves to Plaintiffs as counsel for Defendants in this case.

/s/ Luke W. Goodrich
Luke W. Goodrich